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Cases, Regulations and Statutes

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were to be included as capital gain net income for purposes of determining the amount of disqualified income.[18] The IRS position was apparently based on the fact that net gains from Section 1231 assets are treated as capital gains for income tax purposes.[19]

The new IRS position

In *Rev. Rul. 98-56*,[20] in a five line revenue ruling (which ranks as one of the shortest revenue rulings in history), IRS stated that "gain that is treated as long-term capital gain under § 1231(a)(1) is not disqualified income for purposes of § 32(i)."[21] The news release accompanying the revenue ruling[22] stated that taxpayers "who were otherwise eligible to claim the EITC [sic] on their 1996 or 1997 returns—but had too much investment income because of Form 4797 calculations—should claim a refund by filing an amended return on Form 1040X for each year that the new calculation lowers their investment income below the limit for that year."[23]

In conclusion

It is not clear what caused IRS to change its position. Legislation had been introduced to amend I.R.C. § 32 to provide specifically that Section 1231 gains or losses from the sale of livestock would not be included in disqualified income.[24] However, that legislation was not enacted into law.

Regardless of the reason or reasons for the shift in position, it is good news for low income farmers.

FOOTNOTES

1 I.R.C. § 32. See generally, Harl, "Farmers and the Earned Income Credit," 8 *Agric. L. Dig.* 41 (1997); Harl, "Treasury Position on Section 1231 Gains and the Earned Income Credit," 8 *Agric. L. Dig.* 73 (1997).

2 I.R.C. § 32(i)(2).

3 See I.R.C. § 1231.

4 I.R.B. 1998-__, __.

5 I.R.C. § 32(i)(2).

6 I.R.C. § 32.

7 I.R.C. § 32(i)(2)(D).

8 *Id*.

9 I.R.C. § 1222(9).

10 See I.R.C. § 1221.

11 *Id*.

12 I.R.C. § 1222(2).

13 See I.R.C. § 32(i)(2).

14 I.R.C. § 32(i)(1).

15 See IRS, *Earned Income Credit*, Pub. 596, 1997, p 5.

16 See I.R.C. § 32(i)(2)(D).

17 See Harl, "Treasury Position on Section 1231 Gains and the Earned Income Credit," 8 *Agric. L. Dig.* 73 (1997).

18 *Id*.

19 *Id*.

20 I.R.B. 1998-__,__.

21 *Id*.

22 I.R. 98-66.

23 *Id*.

24 S. 775, H.R. 1800, 105th Cong., 1st Sess. (1997).

CASES, REGULATIONS AND STATUTES

by Robert P. Achenbach, Jr.

ADVERSE POSSESSION

HOSTILE POSSESSION. The property at issue was one-half of a 180 acre parcel of farmland. The plaintiff's deceased spouse had conveyed the property to the defendants but the deed described only half of the property. No one discovered the error until just prior to the instant case. The decedent had sued the defendants for recovery of the 180 acres but the trial court ruled that the defendants had not committed fraud and upheld the original purchase. The true nature of the deed was not discovered during that trial. The defendants used the entire property as their residence and to pasture horses, the defendants paid all taxes on the property, and the plaintiff did not include any portion of the property in the estate of the decedent. The plaintiff sought recovery of the portion of the property not included in the deed and argued that the defendants' possession could not be hostile because no one knew that the deed was defective. The court held that the defendants acquire title to the excluded portion by adverse possession because the defendants' use of the property was adverse to the plaintiff's rights to the property. **Stansbury v. Heiduck, 961 P.2d 977 (Wyo. 1998)**.

ANIMALS

HORSES. The plaintiff was injured while riding a horse in a ride organized by the defendant. Prior to the ride, the plaintiff executed an exculpatory agreement releasing the defendant from liability for any injury to the plaintiff during the ride. Under Colo. Rev. Stat. § 13-21-119, the defendant was exempt from liability only for injuries resulting from the inherent risks of equine activities. The release also included a warning in compliance with the statutory limit of liability. The plaintiff argued that the release was invalid because it was ambiguous in that it contained two standards of liability for the plaintiff. The court held that inclusion of the warning about the statutory limit of liability did not effect the meaning of the release clause which was intended to relieve the plaintiff of liability not covered by the statute. **B & B Livery, Inc. v. Riehl, 960 P.2d 134 (Colo. 1998)**.

BANKRUPTCY

GENERAL-*ALM* § 13.03.*

AVOIDABLE LIENS. The Chapter 12 debtor had obtained a line-of-credit loan from a bank with which the debtor had done much business over many years. However, the debtor always dealt with the president of the bank. In executing the line-of-credit loan, the president referred the debtor to another loan officer who was not familiar with the debtor. The loan mortgage was executed with a number of process errors: (1) no disclosures were provided to the debtor, (2) no notice of any right to rescind was given to the debtor, (3) no true copy of the mortgage was given to the debtor, and (4) the signatures were acknowledged by a notary who did not witness the signing and who was not familiar with the debtor or the debtor's signature. The court held that the errors in executing the mortgage, in particular the faulty acknowledgment, were sufficient to void the mortgage and the security interest of the bank, making the bank's bankruptcy claim unsecured. ***In re* Buchholz, 224 B.R. 13 (Bankr. D. N.J. 1998)**.

EXEMPTIONS

EARNED INCOME CREDIT. The Chapter 7 debtor was allowed an exemption for a federal earned income credit, under 735 I.L.C.S. 5/12-1001(g)(1), as a public assistance benefit. ***In re* Fish, 224 B.R. 82 (Bankr. S.D. Ill. 1998)**.

CHAPTER 12-*ALM* § 13.03[8].*

CLAIMS. The debtors filed for Chapter 12 and included an unsecured judgment claim in their schedules. The judgment creditor did not file a claim in the case within 90 days after the meeting of creditors. The debtors filed a plan which was confirmed prior to the expiration of the 90 day period. The plan contained the unsecured claim but the debtors did not make any payments on that claim. The creditor sought permission to file a late claim, although the creditor acknowledged that no bankruptcy provision allowed the late claim. The creditor argued, instead, that the confirmed plan provision for the claim operated as a court order for payment of the plan. The Bankruptcy Court allowed the claim on equitable grounds, but the appellate court reversed, holding that the Bankruptcy Court had no statutory or equitable authority to allow an untimely filed claim which did not meet any of the exceptions in Bankr. Rule 3002(c). **Matter of Greenig, 152 F.3d 631 (7th Cir. 1998)**.

PLAN. The Chapter 12 debtors sought confirmation of their plan over the objection of creditors who claimed that the plan was not feasible. The plan projected income which was 155 percent higher than the historical income from the farm and projected expenses less than the historical expenses. The debtors did not provide information on how the extra income and reduced expenses were to be achieved. The court denied the confirmation because the income and expense projections were unsupported and unrealistic in view of the historical operation of the farm. ***In re* Sauer, 223 B.R. 715 (Bankr. D. N.D. 1998)**.

SETOFF. The debtors had enrolled in the Conservation Reserve Program (CRP) and the Production Flexibility Contract program prior to filing for Chapter 12. The debtors also had secured loans from the Farm Services Agency. The debtors were to receive post-petition payments under both programs and the FSA sought to setoff the payments against the loans. The court acknowledged that some courts had denied setoff in cases where the funds were needed for a successful reorganization. However, the court held that no such exception existed in the statute and held that the setoff was allowed. ***In re* Sauer, 223 B.R. 715 (Bankr. D. N.D. 1998)**.

FEDERAL TAXATION-*ALM* § 13.03[7].*

AUTOMATIC STAY. The IRS began collection efforts against the debtor by seizing the debtor's inventory of automobiles. During the seizure process, the debtor filed for Chapter 11 and informed the IRS agents that further seizure of the automobiles would be a violation of the automatic stay. The agents contacted their superior who authorized the continued seizure. The autos were removed and placed in a secured lot until their return was ordered by the court. The debtor sought damages for violation of the automatic stay. The court held that the IRS agents acted in a good faith belief that the post-petition seizure was allowed because the levy was served on the debtor pre-petition. In addition, the court held that the debtor was not entitled to any damage award because the debtor failed to prove any actual damages from the post-petition removal of the autos. The court further held that the IRS was not entitled to any recovery for its expenses in executing the levy. ***In re* A & J Auto Sales, Inc., 223 B.R. 839 (D. N.H. 1998), *aff'g*, 210 B.R. 667 (Bankr. D. N.H. 1997)**. See also ***In re* A&J Auto Sales, Inc., 205 B.R. 676 (Bankr. D. N.H. 1996)**.

S CORPORATION ELECTION. The debtor was a corporation owned by a husband and wife. The shareholders originally elected S corporation status for the corporation, but shortly before filing for personal bankruptcy, the shareholders revoked the S corporation election. The corporation also filed for bankruptcy and the trustee sought to avoid the revocation of the S corporation election, arguing that the revocation of the S corporation election was an avoidable fraudulent transfer because the debtor corporation could no longer pass through capital gains which would be realized upon sale of the corporation's assets. The trustee argued that the S corporation election was "property" and the revocation of the S corporation election was a transfer of that property. The trial court had agreed with the IRS that (1) the election was not "property" and that the trustee had no power to make or revoke the S corporation election because the trustee was not a shareholder. The appellate court reversed, holding that (1) the election was an interest in property and (2) the revocation of the election was a transfer subject to the avoidance powers of the trustee if the revocation was shown to be fraudulent. ***In re* Bakersfield Westar, Inc., 98-2 U.S. Tax Cas. (CCH) ¶ 50,843 (Bankr. 9th Cir. 1998)**.

CONTRACTS

HEDGE-TO-ARRIVE CONTRACTS. The case involved hedge-to-arrive contracts which allowed the producer to "cash out" the contracts with the producer paying any rollover and other charges. The ALJ noted that these contract made the prospect of delivery even more tenuous and held that the contracts were void as illegal, under the Commodities Exchange Act as off-exchange futures contracts. Neil Harl will publish an article on this case in a future issue of the Digest. **In the Matter of Grain Land Coop., CFTC Docket No. 97-1 (1998)**.

UNJUST ENRICHMENT. The plaintiff bank held a prior perfected security interest in all current and after-acquired livestock owned by the debtor. The debtor purchased cattle in joint ownership with the defendant and gave the defendant a security interest in the cattle to secure a promissory note for the debtor's portion of the cattle. The defendant failed to timely perfect the security interest and was held not to have a purchase money security interest in the cattle with a priority over the plaintiff's security interest in the debtor's cattle. Prior to the sale of the cattle, the plaintiff had contacted the defendant for return of the cattle but the defendant refused. The defendant eventually sold the cattle and applied the proceeds to the cost of feeding the cattle and to the debtor's loan. The court held that the plaintiff was entitled to the cattle proceeds because of the prior security interest. The defendant argued that it should be able to retain the portion of the proceeds for the feeding costs because the plaintiff would be unjustly enriched. The court denied the defendant's request because the defendant had refused to turn over possession to the plaintiff prior to the sale. **Home Bank v. Cedar Bluff Cattle Feeders, 959 P.2d 934 (Kan. Ct. App. 1998)**.

CORPORATIONS

LIABILITY OF SUCCESSOR CORPORATION. The plaintiff operated a farm equipment dealership under a dealership agreement with a corporation. That corporation hired two individuals to manage the corporation. The individuals also owned another corporation, the defendant. The first corporation eventually had to sell its assets at foreclosure and the defendant was the only bidder. The sales agreement stated that the defendant did not assume the liabilities of the purchased corporation. The defendant decided not to continue the dealership agreement and the plaintiff sued, arguing that the defendant was bound by the dealership agreement entered into by the purchased corporation. The plaintiff argued that the defendant was a mere continuation of the purchased corporation in that the owners of the defendant had managed the purchase corporation until it was purchased by the defendant. The court held that the sale of the original corporation assets was an arm's length transaction which did not continue the original corporation but transferred the original corporation to new ownership. Therefore, the new corporation, the defendant, was not liable for contracts entered into by the original corporation. **Gallenberg Equip., Inc. v. Agromac Intern., 10 F. Supp.2d 1050 (E.D. Wis. 1998)**.

OWNERSHIP OF FARM LAND. South Dakota voters have amended the state constitution to prohibit corporations and syndicates from owning an interest in farm land. Syndicates include limited partnerships, limited liability partnerships, business trusts and limited liability companies. Excepted from this provision are general partnerships other than general partnerships with corporations or syndicates as general or limited partners. Also excepted are (1) family farm corporations and syndicates; (2) cooperatives; (3) non-profit entities; (4) research farms; (5) land leases by alfalfa processors; (6) land used for growing seed or nursery plants; (7) mineral rights; (8) land acquired by process of law to collect on debts; (9) land leased for non-farming use; (10) land held by banks as trustees of trusts for family members, corporations or syndicates; (11) security interests; (12) custom spraying, fertilizing, or harvesting; and (13) livestock futures contracts and livestock purchased for resale or slaughter within two weeks. Family farm corporations and syndicates are defined as entities in which a majority of the interests are held by family members. Family farm corporation or syndicates which cease to be qualified to own farm land have 20 years to requalify or dispose of the land. Corporations and syndicates are required to report farmland ownership annually. **S.D. Const. Art. XVII, §§ 21, 22, 23, 24**.

ENVIRONMENT

CLEAN WATER ACT. The defendants had obtained grazing permits from the Forest Service to graze livestock on federal land. The defendants argued that the Forest Service was required, under 33 U.S.C. § 1365, to first obtain state certification that the grazing would not violate the state's water quality standards. The issue was whether the statute applied to nonpoint source pollution, as from livestock and pasture runoff. The court held that the certification requirement applied only to point source pollution and that animals were not point source polluters. **Oregon Natural Desert Ass'n v. Dombeck, 151 F.3d 945 (9th Cir. 1998)**.

FEDERAL AGRICULTURAL PROGRAMS

ANIMAL WELFARE ACT. The APHIS adopted as final regulations amending the Animal Welfare and horse protection regulations by removing all references to "Regulatory Enforcement and Animal Care" and "APHIS, REAC Sector Supervisor" and replacing them with "Animal Care" and "AC Regional Director," respectively. The changes amended the regulations to accurately reflect the current organizational structure of APHIS. **63 Fed. Reg. 62925 (Nov. 10, 1998)**.

DAIRY. The Risk Management Agency (RMA) announced the availability of a new Dairy Options Pilot Program (DOPP) to be administered by the RMA in conjunction with the private sector. The objective of DOPP is to provide education, training and assistance to producers to ascertain whether put options can provide producers with reasonable protection from the price risk. **63 Fed. Reg. 59930 (Nov. 6, 1998).**

TOBACCO. The FSA has adopted as final regulations to define "warehouse" to exclude places which have contracted with a cooperative marketing association to make CCC price support advances to producers on behalf of the association and to which producers deliver tobacco for display and auction. This amendment removes such warehouses from the jurisdiction of the USWA tobacco warehouse regulations. **63 Fed. Reg. 60203 (Nov. 9, 1998)**.

The plaintiff was a tobacco farmer with a tobacco allotment and quota. The plaintiff's farm was damaged by a hurricane and the plaintiff elected to harvest at least 20 percent of the tobacco in order to qualify for crop insurance. The plaintiff attempted to harvest the tobacco but the harvester became stuck in the field. Agents of the defendant FSA inspected the field several times and saw the harvester during the first visits and saw the field harvested in the final visit. The agents assumed the tobacco had been harvested. Instead, the plaintiff had sold the harvester and chopped the tobacco down with a bushhog before the final visit by the agents. The plaintiff did not report any disposition of the tobacco because very little was harvested. The county FSA committee determined that the plaintiff failed to report disposition of tobacco, fined the plaintiff and reduced the plaintiff's allotment. On appeal, the FSA upheld the county committee ruling. The court reversed the FSA ruling, holding that there was substantial evidence presented by the plaintiff that the tobacco was not harvested but was chopped by bushhog in the field. **Riggs v. Hodges, 7 F. Supp.2d 690 (E.D. N.C. 1998)**.

FEDERAL ESTATE AND GIFT TAX

DISCLAIMERS-*ALM* § 5.02[6].* The decedent's will established a trust for the decedent's children with remainders to the decedent's grandchild, one of which was the taxpayer. The taxpayer did not learn about the contingent interest until much later and did not learn of the entire provisions of the trust until after the taxpayer's parent's death. The taxpayer disclaimed any interest in the trust within nine months after learning about the interest in the trust. The IRS ruled that the disclaimer was timely. **Ltr. Rul. 9845013, Aug. 6, 1998**.

The decedent had established an inter vivos trust which became irrevocable upon the decedent's death. The residuary estate passed to the trust. The remainder interests were held by the decedent's children and grandchildren, with each interest for each minor beneficiary to include a separate education fund. The children and grandchildren disclaimed all interest in the trust, except for the educational portion, within nine months after the decedent's death. The IRS ruled that the disclaimers were effective. **Ltr. Rul. 9845019, Aug. 7, 1998**.

SAVINGS BONDS. The decedent's estate include Series E and Series HH United States savings bonds. The decedent and estate did not elect to report annually the interest which accrued on the bonds. The decedent's will included bequests to several charitable organizations and empowered the personal representative to distribute estate assets in kind to satisfy bequests. The personal representative distributed the savings bonds to the charitable organizations. The IRS ruled that (1) the distribution of the bonds in kind was not a transfer for purposes of I.R.C. § 691(a)(2) and would not result in the recognition of income by the estate and (2) the accrued interest attributable to the bonds as of the date of distribution to the charitable organizations would be includible in the gross income of the charitable organizations in the first taxable year in which the bonds are disposed of, redeemed, or reach final maturity, assuming that no election under section 454(a) of the Code was made. In addition, the accrued interest will be exempt from tax when it is recognized by the charitable organizations, assuming that the charitable organizations were tax-exempt organizations under I.R.C. § 501(c)(3). **Ltr. Rul. 9845026, Aug. 11, 1998**.

FEDERAL INCOME TAXATION

BAD DEBT DEDUCTION. The taxpayer loaned money to several businesses and friends for use in their businesses. The taxpayer claimed business bad debt deductions for the loans in 1988. The court disallowed the deduction for all of the loans because the loans did not become worthless in 1988. **Healey v. Comm'r, 98-2 U.S. Tax Cas. (CCH) ¶ 50,836 (Bankr. N.D. Ga. 1998)**.

CORPORATIONS-*ALM* § 7.02.*

SECTION 1244 STOCK. The taxpayer established a corporation to operate a restaurant. The taxpayer received stock in the corporation along with four other investors. The taxpayer claimed to have paid cash for the stock but failed to present any evidence of the purchase. The taxpayer claimed a loss deduction for the cost of the stock, under I.R.C. § 1244. The court found that the taxpayer had not presented evidence of the purchase of the stock or that the stock had become worthless in the year the loss deduction was claimed; therefore, the court held that the loss deduction was not allowed. **Pecora v. Comm'r, T.C. Memo. 1998-393**.

COURT AWARD AND SETTLEMENTS. The taxpayer resigned employment under pressure and negotiated a settlement with the employer. The taxpayer did not file any lawsuit against the employer and did not present evidence of any right or claim against the employer for personal injury or illness associated with the resignation from employment. The court held that the settlement proceeds were not excludible from gross income. **Harford v. Comm'r, T.C. Memo. 1998-392**.

PENSION PLANS. For plans beginning in October 1998, the weighted average is 6.40 percent with the permissible range of 5.76 to 6.79 percent (90 to 106 percent permissible range) and 5.76 to 7.05 percent (90 to 110 percent permissible range) for purposes of determining the full funding limitation under I.R.C. § 412(c)(7). **Notice 98-51, I.R.B. 1998-__, __**.

S CORPORATIONS-*ALM* § 7.02[3][c].*

BUILT-IN GAINS. The IRS has announced that it will not issue determination letters for the following tax issues under I.R.C. § 1374 in the following situations: (1) an S corporation holds timber property on the date it converts from a C corporation to an S corporation (or acquires timber property from a C corporation in a transaction to which I.R.C. § 1374(d)(8) applies) and during the recognition period (a) cuts the timber and sells resulting wood products (including any unfinished or finished products derived, manufactured, or produced from such wood products) in a transaction to which I.R.C. § 631 does not apply, (b) recognizes gain or loss on cutting the timber pursuant to an I.R.C. § 631(a) election, or (c) recognizes gain or loss on the disposal of timber under a contract to which I.R.C. § 631(b) applies, and (2) an S corporation holds coal or domestic iron ore property on the date it converts from a C corporation to an S corporation (or acquires coal or domestic iron ore property from a C corporation in a transaction to which I.R.C. § 1374(d)(8) applies) and during the recognition period recognizes gain or loss on the disposal of the coal or iron ore under a contract to which I.R.C. § 631(c) applies. **Rev. Proc. 98-56, I.R.B. 1998-__, __, *amplifying* Rev. Proc. 98-3, I.R.B. 1998-1, 100**.

ELECTION. The IRS has issued revised procedures for taxpayers requesting relief for late S corporation elections and certain untimely elections required to be filed by or with respect to an S corporation. Accompanying the procedures is a flowchart designed to aid taxpayers in applying the procedures. The revenue procedure extends the special procedure for late S corporation elections described in Rev. Proc. 97-40 from 6 months to 12 months (but in no event later than the unextended due date of the tax return for the first year the corporation intended to be an S corporation), provides similar relief for certain qualified subchapter S subsidiary (QSub) elections, and extends the application of Rev. Proc. 94-23 to electing small business trust (ESBT) elections.

With respect to late S corporation elections, the revenue procedure applies only to a corporation (1) that has not filed a timely S corporation election under I.R.C. § 1362(a)(1), (2) for which an S corporation election is filed within 12 months of the original due date for the election, and (3) for which the due date for the tax return (excluding extensions) for the first year the corporation intended to be an S corporation has not passed. The revenue procedure describes a simplified method for obtaining relief where the corporation can demonstrate reasonable cause for the failure to file a timely S corporation election. Automatic relief is allowed for ESBT, QSST, and QSub elections intended to be effective as of the first date the corporation intended to elect S corporation status for itself.

The revenue procedure also applies to certain QSub elections for which the automatic relief described above is not available because the parent corporation's S election was timely filed. For those situations, the revenue procedure applies only to a corporation (1) for which a timely QSub election under I.R.C. § 1361(b)(3)(B) was not filed for the desired effective date, (2) for which a QSub election is filed within 12 months of the date that an election for the desired effective date should have been filed, and (3) for which the due date for the S corporation's tax return (excluding extensions) for the first taxable year for which the S corporation desired QSub status for the subsidiary has not passed. The revenue procedure describes a simplified method, similar to that for a late S corporation election, for filing an untimely QSub election.

For late ESBT or QSST elections, this revenue procedure applies to corporations that, but for (1) a trust beneficiary's inadvertent failure to make a timely QSST election or (2) a trustee's inadvertent failure to make a timely ESBT election, would otherwise meet or continue to meet the criteria for S corporation status. The revenue procedure provides an automatic grant of relief for certain corporations that satisfy the criteria therein.

The revenue procedure provides alternatives to the letter ruling process ordinarily used to obtain relief for late S corporation and related elections under I.R.C. §§ 1362(b)(5), 1362(f), or 301.9100-1 and 301.9100-3. Accordingly, user fees do not apply to corrective action under the revenue procedure. However, a corporation or trust that does not meet the requirements for relief or is denied relief under this revenue procedure may request inadvertent termination, inadvertent invalid election, or late election relief (as appropriate) by requesting a private letter ruling. The IRS stated that it will not ordinarily issue a private letter ruling if the period of limitations on assessment under I.R.C. § 6501(a) has lapsed for any taxable year for which an election should have been made or any taxable year that would have been affected by the election had it been timely made. The procedural requirements for requesting a private letter ruling are described in Rev. Proc. 98-1, 1998-1 I.R.B. 7. **Rev. Proc. 98-55, I.R.B. 1998-__, __, *revising* Rev. Proc. 94-23, 1994-1 C.B. 609, and Rev. Proc. 97-40, I.R.B. 1997-33, 50.**

SECURED TRANSACTIONS

FEDERAL FARM PRODUCTS RULE. The debtor had granted a security interest in cattle to a bank. The cattle were sold to the defendants who did not issue checks in the name of the debtor and the bank jointly. One defendant had registered with the state central filing system but the second defendant did not. The plaintiff bank alleged that both defendants knew about the security

**Agricultural Law Manual* (ALM)..

interest. The defendants alleged that the bank had waived its security interest by allowing prior sales of collateral livestock without requiring the joint checks. The trial court had held that the federal farm products rule applied and did not allow any defense of waiver of a security interest. The appellate court reversed, holding that neither the state statute nor the federal statute expressly or impliedly prohibited the defense of waiver of a security interest. **First Bank of Okarche v. Lepak, 961 P.2d 194 (Okla. 1998)**.

GROWING CROPS. The plaintiff held a lien against the debtor's farmland and sought foreclosure. The plaintiff did not assert any entitlement under the lien as to rents or profits from the land. After the foreclosure process had started, the debtor granted a security interest to the defendant in crops to be grown on the property. The foreclosure judgment did not mention any crops or allocate any of the proceeds of the sale to the growing crops. The crops were still in the field when the property was sold at foreclosure and the plaintiff sought to include the growing crops in the property sold. The court held that the crops were personal property and "goods" under the UCC and were not included in the property sold at the foreclosure sale. **Moritz Implement Co., Inc. v. Matthews, 959 P.2d 886 (Kan. 1998)**.

PURCHASE MONEY SECURITY INTEREST. The plaintiff was a bank which had loaned money to the debtor, a cattle rancher. The rancher granted the bank a security interest in all livestock currently owned and acquired after the loan. The security interest was perfected. The defendant entered into an agreement with the rancher to jointly own over 300 head of cattle which were delivered to the rancher for pasturing. The defendant claimed that the agreement was a sale on approval which occurred some time after the cattle were delivered. The court found that the sale was not on approval. The rancher gave the defendant a promissory note for the rancher's share of the cattle price and the defendant filed a security interest more than 20 days after the last cattle delivery date but less than 20 days after the rancher executed the loan agreement. The issue was the date the 20 day perfection requirement began to run for priority status of a purchase money security interest under Kan. Stat. § 84-9-312(4). The court held that the last date of delivery was the first day of the 20 day period because the rule was based on the debtor's possession of the collateral, not the date the loan agreement was fully executed. **Home Bank v. Cedar Bluff Cattle Feeders, 959 P.2d 934 (Kan. Ct. App. 1998)**.

STATE TAXATION

VALUATION. The plaintiffs owned a sheep and cattle ranch covering 10,000 acres. Deployed across this land were 60 oil wells with storage tanks, service roads and other facilities. The plaintiffs did not own the mineral rights but received compensation for use of the surface property and for damage to land and livestock. The county Director of Equalization did not discount the value of the property for any effect of the oil production on the ability to raise livestock on the property. The plaintiffs offered evidence of the reduction of livestock production from the added noise, dust, spillage and toxic chemicals from the oil production. A veterinarian testified as to the effect of these conditions on conception rates and weight gain rates. On appeal, a hearing examiner reduced the land valuation from $42.99 per acre to $40 per acre. The court upheld the hearing examiner's ruling as based on substantial evidence. **Clarkson & Co. v. Harding County, 581 N.W.2d 499 (S.D. 1998)**.

WATER RIGHTS

SURFACE WATER. The plaintiff's land was situated lower than a neighbor's and surface water flowed naturally onto the plaintiff's property. The township constructed a road between the properties and across the natural water flow. The township placed a culvert pipe through the road bed to allow drainage. However, the culvert narrowed the water flow, causing additional erosion on the plaintiff's property, and the plaintiff plugged the culvert to stop the erosion, apparently with the permission of one township commissioner. The culvert remained plugged for over 30 years until wet weather caused flooding on the neighbor's property and damage to the road, causing the township to seek to unplug the culvert. The plaintiff sought to enjoin the unplugging, arguing that the plaintiff had acquired a prescriptive easement to keep the culvert plugged. The court held (1) the water flow was natural drainage of surface waters which (a) the township had a duty to maintain and (b) the plaintiff could not obstruct to the detriment of the higher landowner. The court noted that, if the culvert diverted the natural drainage in such a way as to unreasonably damage the plaintiff's property, the plaintiff could have a remedy for damages or other relief from the township. **Knodel v. Kassel Township, 581 N.W.2d 504 (S.D. 1998)**.

CITATION UPDATES

Eisenberg v. Comm'r, 155 F.3d 50 (2d Cir. 1998), ***rev'g and rem'g*****, T.C. Memo. 1997-483** (valuation of stock) see p. 137 *supra*.

Estate of Street v. Comm'r, 152 F.3d 482 (5th Cir. 1998), ***aff'g*****, T.C. Memo. 1997-32** (life insurance) see p. 145 *supra*.

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FARM ESTATE AND BUSINESS PLANNING - JANUARY 4-8, 1999

by Neil E. Harl and Roger A. McEowen

Spend a week in Hawai'i in January 1999! Balmy trade winds, 70-80 degrees, palm trees, white sand beaches and the rest of paradise can be yours; plus a world-class seminar on Farm Estate and Business Planning by Dr. Neil E. Harl and Prof. Roger A. McEowen. The seminar is January 4-8, 1999 at the spectacular ocean-front Royal Waikoloan Resort on the Big Island, Hawai'i.

Seminar sessions run from 8:00 a.m. to 12:00 p.m. each day, Monday through Friday, with a continental breakfast and break refreshments included in the registration fee. Each participant will receive a copy of Dr. Harl's 465 page seminar manual, *Farm Estate and Business Planning: Annotated Materials* which will be updated just prior to the seminar. CD-ROM versions are also available.

Here are some of the major topics to be covered:

- Introduction to estate and business planning.
- Liquidity planning with emphasis on 15-year installment payment of federal estate tax.
- Co-ownership of property, including discounts, taxation and special problems.
- Federal estate tax, including alternate valuation date, special use valuation, family-owned business deduction (FOBD), handling life insurance, marital deduction planning, disclaimers, planning to minimize tax over deaths of both spouses, and generation skipping transfer tax.
- Gifts and federal gift tax, including problems with future interests, handling estate freezes, and "hidden" gifts.
- Income tax aspects of property transfer, including income in respect of decedent, installment sales, private annuities, self-canceling installment notes, and part gift/part sale transactions.
- Using trusts, including funding of revocable living trusts and medicaid trusts
- Organizing the farm business--one entity or two, corporations, general and limited partnerships and limited liability companies.

Early registration is important to obtain the lowest airfares and insure availability of convenient flights at a busy travel time of the year. Attendees are eligible for **substantial discounts on hotel rooms at the Royal Waikoloan Resort**, the site of the seminar.

The seminar registration fee is $645 for current subscribers to the *Agricultural Law Digest*, the *Agricultural Law Manual*, or *Principles of Agricultural Law.* The registration fee for nonsubscribers is $695.

There is still plenty of room. Call/fax Robert Achenbach at 1-541-302-1958 if you would like a brochure.